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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARCO TRUJILLO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

ABC PHONES OF NORTH CAROLINA,
INC., dba VICTRA, a North Carolina
Corporation; and DOES 1 through 10,

Defendants.

CASE NO.

**CLASS AND COLLECTIVE
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194,
1198);**
- (2) FAIR LABOR STANDARDS
ACT (29 U.S.C. § 201, *et seq.*);**
- (3) FAILURE TO PAY ALL
MINIMUM WAGES (LABOR
CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (4) MEAL PERIOD
VIOLATIONS (LABOR
CODE §§ 226.7, 512, 558);**
- (5) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516,
558);**
- (6) WAGE STATEMENT
PENALTIES (LABOR CODE
§ 226, *et seq.*);**
- (7) WAITING TIME
PENALTIES (LABOR CODE
§§ 201-203);**

(8) **FAILURE TO INDEMNIFY
ALL NECESSARY BUSINESS
EXPENDITURES (LABOR
CODE § 2802); AND**

(9) **UNFAIR COMPETITION
(BUS & PROF CODE § 17200,
et seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Marco Trujillo (“Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this Class Action Complaint (“Complaint”) against
3 Defendants ABC Phones of North Carolina, Inc., doing business as Victra, and
4 DOES 1 to 10 (collectively “Defendants”), inclusive, and on information and belief
5 alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby
8 brings this Complaint for recovery of unpaid overtime wages and penalties under
9 the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 201, *et seq.*, Labor Code §§
10 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
11 and 2802, the Unfair Competition Law (“UCL”) Bus. & Prof. Code, § 17200 *et seq.*,
12 and California Industrial Welfare Commission Wage Order No. 7-2001 (“Wage
13 Order 7”), in addition to seeking injunctive relief, declaratory relief and restitution.

14 2. This Court has jurisdiction over Defendants’ violations of the FLSA
15 pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts rights
16 arising under federal law. This Court has jurisdiction over Defendants’ violations
17 of the Labor Code sections set forth in the immediately preceding paragraph, the
18 UCL, and Wage Order 7, because these claims derive from the same common
19 nucleus of operative facts.

20 **VENUE**

21 3. Venue is proper under 28 U.S.C. § 1391 because Defendants do
22 business within the Central District of California. Defendants are also subject to
23 the personal jurisdiction of this Court pursuant to 28 U.S.C. § 1391(c), because at
24 least some of them operate businesses within the Central District of California.

25 **PARTIES**

26 4. Plaintiff is an individual over the age of eighteen (18). At all relevant
27 times herein, Plaintiff was and currently is a California resident, residing in Orange
28 County. During the four years immediately preceding the filing of the Complaint

1 in this action and within the statute of limitations periods applicable to each claim
2 pled herein, Plaintiff was employed by Defendants as an hourly non-exempt
3 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
4 complained of herein, lost money and/or property, and has been deprived of the
5 rights guaranteed to him by the FLSA, Labor Code sections 201-204, 226 *et seq.*,
6 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802, the UCL,
7 and Wage Order 7, which sets employment standards for the mercantile industry.

8 5. Plaintiff is informed and believes, and based thereon alleges, that
9 during the four years preceding the filing of the Complaint and continuing to the
10 present, Defendants did (and do) business within the Central District of California
11 and the United States by operating retail store locations that sell Verizon Wireless
12 products and services, and therefore, were (and are) doing business in the Central
13 District of California and the State of California.

14 6. Plaintiff is informed and believes, and thereon alleges, that at all times
15 mentioned herein, Defendants were licensed to do business within the Central
16 District of California and the United States, and were the employers of Plaintiff and
17 the Classes (as defined in Paragraph 19).

18 7. Plaintiff does not know the true names or capacities, whether
19 individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 10,
20 inclusive, and for that reason, said Defendants are sued under such fictitious names,
21 and Plaintiff will seek leave from this Court to amend this Complaint when such
22 true names and capacities are discovered. Plaintiff is informed, and believes, and
23 thereon alleges, that each of said fictitious Defendants, whether individual, partners,
24 agents, or corporate, was responsible in some manner for the acts and omissions
25 alleged herein, and proximately caused Plaintiff and the Classes to be subject to the
26 unlawful employment practices, wrongs, injuries and damages complained of
27 herein.

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1 8. At all times herein mentioned, each of said Defendants participated in
2 the doing of the acts hereinafter alleged to have been done by the named
3 Defendants; and each of them, were the agents, servants, and employees of each
4 and every one of the other Defendants, as well as the agents of all Defendants, and
5 at all times herein mentioned were acting within the course and scope of said agency
6 and employment. Defendants, and each of them, approved of, condoned, and/or
7 otherwise ratified each and every one of the acts or omissions complained of herein.

8 9. At all times mentioned herein, Defendants, and each of them, were
9 members of and engaged in a joint venture, partnership, and common enterprise,
10 and acting within the course and scope of and in pursuance of said joint venture,
11 partnership, and common enterprise. Further, Plaintiff alleges that all Defendants
12 were joint employers for all purposes relating to Plaintiff and the Classes.

13 **GENERAL FACTUAL ALLEGATIONS**

14 10. Plaintiff was employed by Defendants as a non-exempt “Sales
15 Associate” from approximately February 12, 2018 to March 23, 2018. Plaintiff
16 worked at Defendants’ store locations in Anaheim, California, Fullerton, California,
17 and Orange, California.

18 11. During Plaintiff’s employment with Defendants, Plaintiff worked in
19 excess of 8.0 hours per workday and/or 40.0 hours per workweek, but did not
20 receive overtime compensation equal to 1.5 times his regular rate of pay for all
21 overtime hours worked. Specifically, Defendants paid Plaintiff and similarly
22 situated employees sales commissions, non-discretionary bonuses for completing
23 trainings, and/or other forms of non-discretionary pay not excludable as a matter of
24 law when calculating an employee’s regular rate of pay (collectively, “Incentive
25 Pay”). Despite Defendants’ payment of Incentive Pay to Plaintiff and similarly
26 situated employees, Defendants failed to properly incorporate the value of earned
27 Incentive Pay when calculating Plaintiff’s and similarly situated employees’ regular
28 rates of pay when they worked overtime hours and received Incentive Pay during

1 the corresponding pay period, thereby causing Plaintiff and similarly situated
2 employees to be underpaid all of their earned overtime wages.

3 12. Defendants also failed to pay Plaintiff and similarly situated
4 employees at least the minimum wage for all hours worked. Specifically,
5 Defendants required Plaintiff and similarly situated employees to complete
6 trainings from home, off the clock, which could take up to eight hours to complete.
7 However, Plaintiff was never compensated for the time spent performing this
8 training, but was simply paid a “bonus” for completing the training. Further,
9 Defendants regularly encouraged Plaintiff and similarly situated employees to
10 travel to other store locations off the clock to observe and train with other
11 employees, but failed to pay Plaintiff and similarly situated employees for this time.

12 13. Defendants also failed to provide all lawful, 30-minute meal periods
13 to Plaintiff and similarly situated employees due to Defendants’ unlawful meal
14 period policies/practices. Defendants regularly employed only a single employee at
15 each of its store locations, and therefore, Plaintiff and similarly aggrieved
16 employees were unable to take timely, off-duty meal periods when customers were
17 in the store or other work duties prevented them from taking timely, off-duty meal
18 periods. Further, on occasions when Plaintiff was provided with a meal period, it
19 was typically untimely, interrupted, or shorter than 30 minutes in length.
20 Furthermore, when Plaintiff and similarly situated employees worked shifts longer
21 than 10.0 hours in length, Defendants failed to provide second duty-free, timely 30-
22 minute meal periods.

23 14. Defendants also maintained an unlawful policy/practice of manually
24 altering Plaintiff’s and similarly situated employees’ time records to insert meal
25 periods that were not truly taken. Defendants’ policy/practice of manually inserting
26 meal periods that were not actually taken resulted in the non-payment of all
27 minimum and overtime wages earned.

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1 15. On occasions when Plaintiff and similarly situated employees were not
2 provided with a timely, duty-free 30-minute meal period, Defendants failed to
3 compensate Plaintiff and similarly situated employees with the required meal period
4 premium payment for each workday in which a meal period violation occurred, as
5 required by Labor Code section 226.7.

6 16. Defendants also failed to authorize and permit all duty-free 10-minute
7 rest periods for every four hours worked, or major fraction thereof, due to
8 Defendants' unlawful rest period policies/practices. Specifically, Defendants failed
9 to authorize and permit Plaintiff and similarly aggrieved employees to take any rest
10 periods whatsoever. Additionally, when Plaintiff was the sole employee staffed at
11 Defendants' store location, Plaintiff was practically unable to take a duty-free rest
12 period even if one had been authorized and permitted, as he was unable to be
13 relieved of all work duties. On occasions when Plaintiff and similarly situated
14 employees did not receive all legally-compliant, duty-free paid 10-minute rest
15 period to which they were entitled, Defendants failed to compensate Plaintiff and
16 similarly situated employees with the required rest period premium for each
17 workday in which a rest period violation occurred, as required by Labor Code
18 section 226.7. On information and belief, for at least a portion of the putative class
19 period, Defendants failed to maintain a pay code for rest period premiums.

20 17. During his employment with Defendants, Plaintiff was required to
21 attend training sessions every Friday in Brea, then clock out at the completion of
22 the training before driving directly to his store location for work. However, despite
23 requiring Plaintiff and similarly situated employees to travel between weekly
24 trainings locations and Defendants' store locations, Defendants failed to reimburse
25 Plaintiff and similarly situated employees for the mileage accrued, in violation of
26 Labor Code section 2802.

27 18. As a result of the foregoing violations, Defendants maintained
28 inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and

1 similarly situated employees, and failed to pay Plaintiff and similarly situated
2 employees all earned wages at the time of their respective separations from
3 employment.

4 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

5 19. Class Definitions: Plaintiff brings this action on behalf of himself and
6 the following Classes pursuant to Rule 23 of the Rules of Federal Procedure and the
7 FLSA:

8 a. The California Overtime Class consists of all of Defendants' current
9 and former non-exempt employees in California who received Incentive Pay and
10 worked more than 8 hours per workday and/or 40 hours per workweek during the
11 corresponding pay period, during the four years immediately preceding the filing of
12 the Complaint through the present.

13 b. The FLSA Overtime Class consists of all Defendants' current and
14 former non-exempt employees throughout the United States who received Incentive
15 Pay and worked more than 40 hours per workweek during the corresponding pay
16 period, during the three years immediately preceding the filing of the Complaint
17 through the present.

18 c. The Minimum Wage Class consists of all of Defendants' current and
19 former non-exempt employees in California who: (i) were compensated on a flat-
20 sum "bonus" basis for performing at-home trainings; and/or (ii) had work time
21 manually removed from their time records for purported meal periods.

22 d. The Meal Period Class consists of all Defendants' current and former
23 non-exempt employees in California who worked at least one shift: (i) in excess of
24 5.0 hours and whose time records reflect a missed first meal period, meal period
25 lasting shorter than 30-minutes in length, and/or first meal period commencing after
26 the conclusion of the fifth hour of work; and/or (ii) in excess of 10.0 hours and
27 whose time records reflect a missed second meal period, second meal period lasting
28 shorter than 30-minutes in length, and/or second meal period commencing after the

1 conclusion of the tenth hour of work, during the four years immediately preceding
2 the filing of the Complaint through the present.

3 e. The Rest Period Class consists of all Defendants' current and former
4 non-exempt employees in California who worked at least one shift of 3.5 hours or
5 more during the four years immediately preceding the filing of the Complaint
6 through the present.

7 f. The Reimbursement Class consists of all of Defendants' current and
8 former non-exempt employees in California who were not reimbursed for necessary
9 business expenses incurred during the four years immediately preceding the filing
10 of the Complaint through the present.

11 g. The Wage Statement Class consists of all members of the California
12 Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period
13 Class, during the one year immediately preceding the filing of the Complaint
14 through the present.

15 h. The Waiting Time Class consists of all of Defendants' formerly
16 employed members of the California Overtime Class, Minimum Wage Class, Meal
17 Period Class, Rest Period Class, and/or Reimbursement Class, who separated their
18 employment from Defendants during the three years immediately preceding the
19 filing of the Complaint through the present.

20 i. The Unfair Competition Law Class consists of all members of the
21 California Overtime Class, Minimum Wage Class, Meal Period Class, Rest Period
22 Class, and/or Reimbursement Class, during the four years immediately preceding
23 the filing of the Complaint through the present.

24 20. **Numerosity/Ascertainability:** The members of the Classes are so
25 numerous that joinder of all members would be unfeasible and not practicable. The
26 membership of the classes and subclasses are unknown to Plaintiff at this time;
27 however, it is estimated that the Classes number greater than one hundred (100)
28

1 individuals as to each Class. The identity of such membership is readily
2 ascertainable via inspection of Defendants' employment records.

3 **21. Common Questions of Law and Fact Predominate/Well Defined**
4 **Community of Interest:** There are common questions of law and fact as to Plaintiff
5 and all other similarly situated employees, which predominate over questions
6 affecting only individual members including, without limitation:

7 i. Whether Defendants failed to properly include all forms of Incentive
8 Pay when computing the respective regular rates for members of the California and
9 FLSA Overtime Classes;

10 ii. Whether Defendants failed to pay members of the Minimum Wage
11 Class at least the statutory minimum wage for all hours actually worked;

12 iii. Whether Defendants failed to provide all lawful meal periods to
13 members of the Meal Period Class, or paid one hour of premium pay in lieu thereof;

14 iv. Whether Defendants authorized and permitted all lawful rest periods
15 to members of the Rest Period Class, or paid one hour of premium pay in lieu
16 thereof;

17 v. Whether Defendants properly reimbursed the members of the
18 Reimbursement Class for all necessary business expenses incurred;

19 vi. Whether Defendants provided accurate, itemized wage statements to
20 members of the Wage Statement Class, pursuant to Labor Code section 226;

21 vii. Whether defendants properly paid all final wages to members of the
22 Waiting Time Class at the time of separation from employment; and

23 viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or
24 deceptive business practices by and through the wage and hour policies and
25 practices described above, and whether as a result Defendants owe the classes
26 restitution.

27 **22. Predominance of Common Questions:** Common questions of law
28 and fact predominate over questions that affect only individual members of the

1 Classes. The common questions of law set forth above are numerous and
2 substantial and stem from Defendants' policies and/or practices applicable to each
3 individual class member, such as their uniform method of calculating the regular
4 rate for overtime purposes and their uniform meal and rest period policies/practices.
5 As such, these common questions predominate over individual questions
6 concerning each individual class member's showing as to their eligibility for
7 recovery or as to the amount of their damages.

8 23. **Typicality:** The claims of Plaintiff are typical of the claims of the
9 Classes because Plaintiff was employed by Defendants as a non-exempt employee
10 in California during the statutes of limitation applicable to each claim pled in the
11 Complaint. As alleged herein, Plaintiff, like the members of the Classes, was
12 deprived of all overtime and minimum wages earned, meal and rest period premium
13 wages owed, was not reimbursed for all necessary business expenses incurred, was
14 not furnished with accurate and complete wage statements, and did not timely
15 receive all final wages at the time of his separation from employment.

16 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all
17 necessary steps to represent fairly and adequately the interests of the members of
18 the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and
19 adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys
20 have prosecuted and defended numerous wage-and-hour class actions in state and
21 federal courts in the past and are committed to vigorously prosecuting this action
22 on behalf of the members of the classes.

23 25. **Superiority:** The California Labor Code is broadly remedial in nature
24 and serves an important public interest in establishing minimum working conditions
25 and standards in California. Similarly, the FLSA is remedial in nature and serves
26 an important public interest in establishing minimum working conditions and
27 standards through the United States. These laws and labor standards protect the
28 average working employee from exploitation by employers who have the

responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

26. As such, the Rule 23 Classes identified in Paragraph 19 are maintainable as a Class under Rule 23(b)(1) and/or Rule 23(b)(3).

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FIRST CLAIM

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

28. This claim is brought pursuant to California Labor Code sections 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

29. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the California Overtime Class, for all overtime hours worked pursuant to Labor Code section 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the California Overtime Class at one and one half times their “regular rate” of pay for all such overtime hours.

30. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the California Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit

1 according to Labor Code sections 204, 510, 558, 1194, and 1198; Wage Order 7;
2 and Code of Civil Procedure section 1021.5.

3 **SECOND CLAIM**

4 **FAIR LABOR STANDARDS ACT**

5 **(AGAINST ALL DEFENDANTS)**

6 31. Plaintiff re-alleges and incorporates by reference all previous
7 paragraphs as though fully set forth herein.

8 32. This claim is brought pursuant to 29 U.S.C. § 207, which requires
9 employers to pay all non-exempt employees one and one-half times the regular rate
10 of pay for all hours worked in excess of forty per workweek.

11 33. Plaintiff is informed and believes, and based thereon alleges that,
12 Defendants regularly and systematically, as a policy and practice, miscalculated the
13 overtime rate of pay by failing to properly include the various forms of Incentive
14 Pay paid to Plaintiff and members of the FLSA Overtime Class, which are not
15 excludable when calculating an employee's regular rate of pay. Accordingly,
16 Plaintiff and members of the FLSA Overtime Class were not compensated at the
17 appropriate rates of overtime pay for all hours worked.

18 34. Defendants' overtime policies and practices alleged herein violate the
19 FLSA's overtime requirements including, but not limited to 29 U.S.C. § 207.

20 35. Defendants' policies and practices, as alleged herein, constitute a
21 wilful violation of the FLSA, within the meaning of 29 U.S.C. § 255.

22 36. Defendants' policies and practices of failing to properly include all
23 forms of Incentive Pay in the overtime rate calculations for Plaintiff and members
24 of the FLSA Overtime Class and Defendants' failure to pay overtime wages for all
25 overtime hours worked creates an entitlement to recovery by Plaintiff and members
26 of the FLSA Overtime Class in a civil action for the unpaid amount of overtime
27 premiums owing, including liquidated damages, attorneys' fees and costs, and
28 interest thereon, pursuant to 29 U.S.C. § 216.

THIRD CLAIM

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

37. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

38. Wage Order 7 and California Labor Code sections 1197 and 1182.12 establish the right of employees to be paid a statutory minimum wage for all hours worked in amounts set by state law. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid minimum wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 7.

39. California Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code sections 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

40. As a direct and proximate result of defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and are entitled to recover economic and statutory damages

1 and penalties and other appropriate relief as a result of Defendants' violations of
2 the California Labor Code and Wage Order 7.

3 41. Defendants' practice and uniform administration of corporate policy
4 regarding illegal employee compensation is unlawful and creates an entitlement to
5 recovery by Plaintiff and members of the Minimum Wage Class in a civil action for
6 the unpaid amount of minimum wages, liquidated damages, including interest
7 thereon, statutory penalties, and attorneys' fees and costs of suit according to
8 California Labor Code sections 204, 558, 1194, 1197, and 1198, and Code of Civil
9 Procedure section 1021.5.

10 **FOURTH CLAIM**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 42. Plaintiff re-alleges and incorporates by reference all previous
14 paragraphs as though fully set forth herein.

15 43. Plaintiff is informed and believes, and based thereon alleges, that
16 Defendants failed in their affirmative obligation to provide all of their non-exempt
17 employees in California, including Plaintiff and the Meal Period Class, with all
18 legally compliant meal periods in accordance with the mandates of the California
19 Labor Code and Wage Order 7, for the reasons set forth in the factual allegations
20 and class definitions sections of this Complaint. Despite Defendants' violations,
21 Defendants did not pay an additional hour of premium pay to Plaintiff and the
22 members of the Meal Period Class at their respective regular rates of pay, in
23 accordance with California Labor Code sections 226.7 and 512.

24 44. As a result, Defendants are responsible for paying premium
25 compensation for meal period violations, including interest thereon, as well as
26 statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code sections
27 226.7, 512, and 558, Wage Order 7, and California Code of Civil Procedure section
28 1021.5.

FIFTH CLAIM

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

46. Wage Order 7, section 12 and California Labor Code sections 226.7, 516, and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

47. As alleged herein, and due to their unlawful rest period policies and/or practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation, as required by Labor Code section 226.7.

48. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code sections 226.7, 516, and 558, Wage Order 7, and California Code of Civil Procedure section 1021.5.

SIXTH CLAIM

WAGE STATEMENT PENALTIES

(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

50. Plaintiff is informed and believes, and based thereon alleges that, Defendants knowingly and intentionally, as a matter of uniform policy and practice,

1 failed to furnish Plaintiff and members of the Wage Statement Class with accurate
2 and complete, itemized wage statements that included, among other requirements,
3 all minimum and overtime wages earned, meal and rest period premiums, and total
4 gross and net wages earned, in violation of Labor Code section 226 *et seq.*

5 51. Defendants' failure to furnish Plaintiff and members of the Wage
6 Statement Class with complete and accurate, itemized wage statements resulted in
7 actual injury, as said failures led to, among other things, the non-payment of all
8 minimum and overtime wages earned, and meal and rest period premium wages
9 owed, and deprived them of the information necessary to identify the discrepancies
10 in Defendants' reported data.

11 52. Defendants' failures created an entitlement to recovery by Plaintiff and
12 members of the Wage Statement Class in a civil action for damages and/or penalties
13 pursuant to Labor Code section 226, including statutory penalties, civil penalties,
14 and reasonable attorneys' fees and costs of suit, according to California Labor Code
15 section 226 *et seq.*

16 **SEVENTH CLAIM**

17 **WAITING TIME PENALTIES**

18 **(AGAINST ALL DEFENDANTS)**

19 53. Plaintiff re-alleges and incorporates by reference all previous
20 paragraphs as though fully set forth herein.

21 54. This cause of action is brought pursuant to California Labor code
22 sections 201-203, which require an employer to pay all wages owing immediately
23 at the time of termination of employment in the event the employer discharges the
24 employee or the employee provides at least 72 hours of notice of his/her intent to
25 quit. In the event the employee provides less than 72 hours of notice of his/her
26 intent to quit, said employee's wages become due and payable not later than 72
27 hours upon said employee's last date of employment.

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1 55. Defendants failed to timely pay Plaintiff and members of the Waiting
2 Time Class all of their final wages at the time of termination, which include, among
3 other things, underpaid minimum and overtime wages, and meal and rest period
4 premium wages. Further, Plaintiff is informed and believes, and based thereon
5 alleges, that as a matter of uniform policy and practice, Defendants continue to fail
6 to pay members of the Waiting Time Class all earned wages at the end of
7 employment in a timely manner pursuant to the requirements of California Labor
8 Code sections 201-203. Defendants' failure to pay all final wages was willful
9 within the meaning of Labor Code section 203.

10 56. Defendants' willful failure to timely pay Plaintiff and the members of
11 the Waiting Time Class their earned wages upon separation from employment
12 results in a continued payment of wages up to thirty (30) days from the time the
13 wages were due. Therefore, Plaintiff and members of the Waiting Time Class are
14 entitled to compensation pursuant to California Labor Code section 203, plus
15 reasonable attorneys' fees and costs of suit.

16 **EIGHTH CLAIM**
17 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS**
18 **EXPENDITURES**
19 **(AGAINST ALL DEFENDANTS)**

20 57. Plaintiff re-alleges and incorporates by reference all previous
21 paragraphs as though fully set forth herein.

22 58. This cause of action is brought pursuant to California Labor Code
23 section 2802, which requires an employer to "indemnify his or her employees for
24 all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer."

27 59. As alleged herein, and due to their unlawful reimbursement policies
28 and/or practices, Defendants failed to indemnify Plaintiff and the members of the

1 Reimbursement Class for all necessary business expenses, including, among other
2 things, mileage accrued.

3 60. As a proximate result of Defendants' failure to indemnify Plaintiff and
4 the members of the Reimbursement Class for their necessary business expenses
5 incurred, Plaintiff and members of the Reimbursement Class are entitled to
6 damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown
7 according to proof at trial, pursuant to California Labor code section 2802.

8 **NINTH CLAIM**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 61. Plaintiff re-alleges and incorporates by reference all previous
12 paragraphs as though fully set forth herein.

13 62. Defendants have engaged and continue to engage in unfair and/or
14 unlawful business practices in California in violation of California Business and
15 Professions Code section 17200, *et seq.*, by failing to pay Plaintiff and the Classes
16 all minimum and overtime wages earned; meal and rest period premium wages, and
17 mandatory business expenses incurred, knowingly failing to furnish accurate and
18 complete itemized wage statements, and wilfully failing to timely pay Plaintiff and
19 members of the Waiting Time Class all final wages upon termination of
20 employment.

21 63. Defendants' utilization of these unfair and/or unlawful business
22 practices deprived Plaintiff, and continues to deprive members of the Classes, of
23 compensation to which they are legally entitled, constitutes unfair and/or unlawful
24 competition, and provides an unfair advantage over Defendants' competitors who
25 have been and/or are currently employing workers and attempting to do so in honest
26 compliance with applicable wage and hour laws.

27 64. Because Plaintiff is a victim of Defendants' unfair and/or unlawful
28 conduct alleged herein, Plaintiff, for himself and on behalf of the members of the

1 Classes, seeks full restitution of monies as necessary and according to proof, to
2 restore any and all monies withheld, acquired and/or converted by Defendants
3 pursuant to California Business and Professions Code sections 17203 and 17208.

4 65. The acts complained of herein occurred within the four years
5 immediately preceding the filing of the Complaint in this action.

6 66. Plaintiff was compelled to retain the services of counsel to file this
7 court action to protect his interests and those of the Classes, to obtain restitution and
8 injunctive relief on behalf of Defendants' current hourly non-exempt employees,
9 and to enforce important rights affecting the public interest. Plaintiff has thereby
10 incurred the financial burden of attorneys' fees and costs, which he is entitled to
11 recover under California Code of Civil Procedure section 1021.5.

12 **PRAYER**

13 WHEREFORE, Plaintiff prays for judgment for himself and for all others on
14 whose behalf this suit is brought against Defendants, jointly and severally, as
15 follows:

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiff as representative of the Classes;
- 18 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 19 4. Upon the First Claim, for compensatory, consequential, general and
20 special damages according to proof pursuant to California Labor Code
21 sections 204, 510, 558, 1194, and 1198;
- 22 5. Upon the Second Claim, for compensatory, consequential, liquidated,
23 general and special damages pursuant to 29 U.S.C. sections 207 and 216;
- 24 6. Upon the Third Claim, for payment of minimum wages, liquidated
25 damages, and penalties according to proof pursuant to California Labor
26 Code sections 1182.12, 1194, 1194.2, and 1197;
- 27
- 28

1 7. Upon the Fourth Claim, for compensatory, consequential, general and
2 special damages according to proof pursuant to California Labor Code
3 sections 226.7, 512, and 558;

4 8. Upon the Fifth Claim, for compensatory, consequential, general and
5 special damages according to proof pursuant to California Labor Code
6 sections 226.7, 516, and 558;

7 9. Upon the Sixth Claim, for penalties pursuant to California Labor Code
8 section 226, *et seq.*;

9 10. Upon the Seventh Claim, for statutory waiting time penalties pursuant to
10 California Labor code sections 201-203;

11 11. Upon the Eighth Claim, for compensatory, consequential, general and
12 special damages according to proof pursuant to California Labor code
13 section 2802;

14 12. Upon the Ninth Claim, for restitution to Plaintiff and members of the
15 Classes of all money and/or property unlawfully acquired by Defendants
16 by means of any acts or practices declared by this Court to be in violation
17 of California Business and Professions Code section 17200, *et seq.*;

18 13. Prejudgment interest on all due and unpaid wages pursuant to California
19 Labor Code section 218.6 and California Civil Code sections 3287 and
20 3289;

21 14. On all Claims, for attorneys' fees and costs as provided by California
22 Labor Code sections 218.5, 1194 *et seq.*, 2802, and California Code of
23 Civil Procedure section 1021.5; and

24 15. For such other and further relief the Court may deem just and proper.

25 Dated: June 8, 2018

Respectfully submitted,
HAINES LAW GROUP, APC

26 By:


Paul K. Haines

Attorneys for Plaintiff


DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 8, 2018

HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff